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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------------|------------------------|
| 10/535,225 | 05/16/2005 | Ted Marchildon | 34232.1 | 9397 |
| 28049 7590 04/06/2011 PATE PIERCE & BAIRD Post Office Box 520812 SALT LAKE CITY, UT 84152-0812 | | | EXAMINER EVANS, EBONY E | |
| | | | ART UNIT 3644 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/535,225

Applicant(s)

MARCHILDON, TED

Examiner

EBONY EVANS

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 1-13 and 19 is/are allowed.
6) ☒ Claim(s) 14-18 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 16 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/17/2009, 12/9/2009, 5/16/2005
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 6 is objected to because of the following informality: the word “**that**” in line 2 should be replaced with **—than—**. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leduc et al. (US 6840007 henceforth *Leduc*).**

4. In re to claim 14, Leduc discloses a growing medium (88, col. 5, lines 51-53), rotating growing apparatus (16), a light source (col. 6, lines 30-37), moving the growing apparatus between two positions (fig. 1) and delivering water to the growing medium (col. 4, lines 53-56).

5. In re to claim 15, Leduc discloses a vertically higher and lower position (fig. 1, during a revolution of the drum (12), the apparatus (16) would first be located at the apex of the drum (a first position), then rotated to enter the water tray at a lower, second position).

6. In re to claim 16, Leduc discloses two horizontally separated positions (fig. 1, when the apparatus (16) is located at a 90 or 180 degree position from the apex of the drum (12)).

7. In re to claim 17, see claims 15 and 16 for explanation.
8. In re to claim 18, Leduc discloses a closed circuit (Fig. 1, the drum (12) which the apparatus (16) is located on constitutes a closed circuit).

Allowable Subject Matter

9. Claims 1-13 and 19 are allowed.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EBONY EVANS whose telephone number is (571)270-1157. The examiner can normally be reached on M-T 8-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy D. Collins can be reached on 571-272-6886. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rob Swiatek/
Primary Examiner, Art Unit 3643
5 April 2011

/E. E./
Examiner, Art Unit 3644